

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4372 OF 1991

Shree Shivaji Shikshan Prasarak)
Mandal, Karmveer Nagar, Barshi,)
District Solapur, by its)
General Secretary.)... Petitioner.

Versus

Kiran Bhaskar Kulkarni)
1139, Deshpande Wada, Kasba)
Peth, Barsi, Dist. Solapur.)... Respondent.

Mr. K. Y. Mandlik for the Petitioner.

Mr. Girish S.Godbole for the Respondent.

CORAM : S. A. BOBDE, J.

DATED : JANUARY 14, 2005.

J U D G E M E N T :

The petitioner is a registered public trust and a Society established inter alia for education of children of poor agriculturists and labourers. It

runs a school in which the respondent was employed as a teacher.

2. By this petition, the petitioner challenges the order of the School Tribunal dated 23rd August, 1991 by which termination of the respondent was set aside with a direction to reinstate. The sole ground on which the respondent has been reinstated is that he has been in continuous service for more than two years and he must be taken to be a permanent employee of the school; the procedure for termination of permanent employee not having been adopted by the petitioner, the termination is illegal.

3. The petitioner issued three appointment orders to the respondent. By the first order dated 7th September, 1987 the respondent was appointed as full time lecturer in Electrical Engineering Institute of Polytechnic with effect from 1/9/1987 to 15/6/1988 temporarily for the said period. Thereafter, by an order dated 28th July, 1988 he was appointed as a Lecturer in Electrical Engineering for the period from 1/8/1988 to 15/6/1989. This appointment was also temporary and for the said period. On the third occasion, by an order dated 31st June, 1989 the respondent was appointed as a Lecturer in Electronics

Engineering with effect from 15/7/1989 to 15/6/1990 on the same terms i.e. temporarily and for the said period. All the appointments were expressly stated in the appointment orders to be temporary and for a fixed period.

4. On the reopening of the academic year 1990-1991 i.e. from 15th June, 1990 the respondent was not allowed to join his duties. He preferred an appeal on 12th September, 1990 to the School Tribunal. The delay in filing the appeal has been condoned. The School Tribunal set aside the termination order and directed reinstatement on the ground that the respondent was in continuous service for more than two years and in a permanent vacancy. It is this order that is impugned by the Management.

5. Mr. Mandlik, learned Counsel for the petitioner, submitted that the present case is squarely covered by the decision of the Supreme Court in the case of **Hindustan Education Society and another vs. Sk. Kaleem Sk. Gulam Nabi and Others**, reported in (1997) 5 SCC 152. Learned Counsel referred to paragraph 3 of the report in which the terms of appointment of the teacher in that has been reproduced. Indeed the relevant term is similar to the present case. In that

case also the appointment was purely temporary and for a fixed period. Mr.Mandlik, learned Counsel for the petitioner, therefore, submitted that the order of appointment in the present case which was purely temporary and for a limited period must be regarded in the same manner as the order in Hindustan Education Society (supra). He also relied on the observations of the Supreme Court in paragraph 6 that the appointment of the Respondent in the present case cannot be considered to be a permanent appointment. The terms of the appointment of the teacher are indeed similar to the terms of appointment in this case; i.e. temporary and for a fixed period.

6. Mr. Godbole, learned Counsel for the respondent, however, urged that the scheme of the Act and in particular Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 read with Rules framed thereunder require every appointment in a permanent and clear vacancy to be on probation. He submitted that Section 5 mandates the Management of the School to make an appointment in a permanent vacancy for a period of two years vide Section 5(2) of the Act. He further relied on Rule 9 of the Rules framed under the Act which requires a letter of appointment to be made in the form in

Schedule "D". According to the learned Counsel, a perusal of the Form shows that temporary appointment can be made only in a vacancy arising because of leave or deputation and gives only one alternative to the Management i.e. to appoint a teacher on probation for a period of two years. The learned Counsel also relied on Rule 10 which contemplates only two categories of non-permanent employee i.e. (1) one who is appointed to a temporary vacancy for a fixed period and (2) one who is appointed on probation. According to the learned Counsel, therefore, if the vacancy is permanent there cannot be a temporary appointment and that is a mandate.

7. The learned Counsel for the petitioner further submitted that the combined effect of Section 5 of the Act read with Rules 5, 9 and 10 can only be that a teacher who is appointed in a permanent vacancy must be held to be a permanent employee who can only be removed in accordance with the procedure for removing permanent employee such as that provided in Rule 29 read with Rule 36. Thus according to the learned Counsel, if there is a permanent vacancy the Management can only appoint a teacher on probation for a period of two years. If he completes his probation period of two years, he must be deemed to have been

confirmed. Thereafter, he can only be removed in the manner provided for removal of a permanent employee.

8. This argument cannot be upheld in view of the judgment of the Supreme Court in Hindustan Education Society (Supra) in which Their Lordships dealt with a case similar to the present case and took the view that where the appointment order of a teacher was purely temporary and for a limited period, he cannot be regarded as a permanent employee. In fact the view of this Court to the contrary was reversed by the Supreme Court in that case. In the circumstances, it is clear that the impugned order which does not take into account the fact that the respondent's appointment was a temporary and for a fixed period, is not sustainable and is liable to be set aside.

9. In the circumstances, Rule is made absolute in terms of prayer clause (b) of the petition, which reads thus:

(b) Order dated 23rd August, 1991 passed by the Presiding Officer, School Tribunal, Pune Region, Pune in Appeal No. 184 of 1990 be set aside.

10. Writ Petition is disposed of accordingly. There shall be no order as to costs.

Sd/-

S. A. BOBDE, J.